

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY



MARTIN LUTHER KING JR. FEDERAL BLDG. & U.S. COURTHOUSE
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WILLIAM J. MARTINI
JUDGE

September 8, 2005

LETTER OPINION

Benjamin Levine
3 Cornwall Drive
East Brunswick, NJ 08816
Pro se Plaintiff

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Engleman & Hoffman
99 Highway 35
P.O. Box 257
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Attorneys for Defendant

**Re: Levine v. Hoffman,
Docket No. 05-CV-3566 (WJM)**

Dear Counsel:

This matter comes before the Court on Magistrate Judge Hedges' report and recommendation dismissing the complaint. Judge Hedges issued an order to show cause as to why the complaint should not be dismissed for lack of subject matter jurisdiction on July 26, 2005. Plaintiff did not respond, and Judge Hedges issued a report and recommendation on August 12, 2005 dismissing the complaint, to which no objections were filed. This Court now **AFFIRMS** and **ADOPTS** the report and recommendation.

Plaintiff Benjamin Levine alleges in his complaint that defendants fraudulently took his property without providing payment of the agreed upon compensation. The complaint very generally avers subject matter jurisdiction by stating "The freedom to quiet enjoyment of one's house and land, and the lawful use of one's house and land is a right of basic Constitutional

dimension [].” Judge Hedges concluded that plaintiff has not adequately pled subject matter jurisdiction. *See Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (determining federal question jurisdiction must be determined by reference to a well-pleaded complaint).

Pursuant to *Fed. R. Civ. P.* 53 (e)-(f), a district court shall accept the Magistrate’s reported findings of fact unless clearly erroneous. *See Levin v. Garfinkle*, 540 F. Supp. 1228, 1236 (E.D. Pa. 1982) (citing *Bennerson v. Joseph*, 583 F.2d 633 (3d Cir. 1978)). The Magistrate’s conclusions of law do not bind the Court; they are recommendations which the Court may consider. *See In re Mifflin Chemical Corp.*, 123 F.2d 311 (3d Cir. 1941), *cert. denied*, 315 U.S. 815 (1942).

After a thorough review, this Court **AFFIRMS** and **ADOPTS** the report and recommendation. A separate order will be entered consistent with this letter opinion.

s/William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

cc: The Honorable Ronald J. Hedges, U.S.M.J.